IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 13888 of 2004

For Approval and Signature:

HONOURABLE MS.JUSTICE H.N.DEVANI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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UNITED INDIA INSURANCE CO LTD - Petitioner(s)
Versus
YOGENDRAKUMAR MAKAMBHAI PATEL & 2 - Respondent(s)

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Appearance :
MS MEGHA JANI for Petitioner(s) : 1,
RULE SERVED for Respondent(s) : 1 - 2.
MR UDAY R BHATT AGP for Respondent(s) : 3,

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CORAM : HONOURABLE MS.JUSTICE H.N.DEVANI

Date : 11/07/2006

ORAL JUDGMENT

1. This petition is directed against the order dated 11th June, 2004, passed by the Motor Accident Claims Tribunal at Himatnagar, below

Exh.19 in M.A.C.P. No.615 of 2001, whereby the Tribunal has rejected the application of the petitioner to join the driver, owner and Insurance Company of the scooter bearing registration No.GTV-397, one of the vehicles involved in the accident, as parties.

2. M.A.C.P. No.615 of 2001 has been filed by the respondent No.1 herein, namely, Yogendrakumar Makambhai Patel, Police Sub-Inspector, claiming Rs.1,50,000/- towards compensation for the injuries sustained by him in an accident which took place on 23rd April, 2000. It is the case of the claimant in the claim petition that while on duty he was travelling in a police tempo bearing registration No.GJ- 9-G-7032 when the accident occurred. That, in order to save a scooter bearing registration No.GTV-397 which was coming from the opposite direction, the driver of the tempo had to suddenly apply the brakes due to which the tempo turned on its side. However, the claimant had not joined the driver, owner and Insurance Company of the said scooter as party defendants/opponents in the claim petition.

3. The petitioner-Insurance Company filed an application at Exh.19 before the Tribunal praying that the driver, owner and Insurance Company of the Scooter be joined as parties. However, by the impugned order, the Tribunal has

rejected the said application which has given rise to the present petition.

4. Heard Ms. Megha Jani, learned advocate for the petitioner and Mr. U.R.Bhatt, learned Assistant Government Pleader on behalf of the respondent No.3. Though served there is no appearance on behalf of the respondents No. 1 and 2.

5. The learned advocate for the petitioner has submitted that it is a settled legal position that whenever a plea for joining another tortfeasor is raised and prayed for, the Tribunal is required to allow such application and join the other tortfeasors if they are left out. That either of the parties can move the Tribunal for joining other tortfeasors, in which case the Tribunal should allow the application. It was submitted that the Tribunal has erred in rejecting the application on the ground that it appears that the accident in question has taken place due to the sole negligence of the driver of the tempo. It is submitted that such a conclusion is premature and is likely to affect the merits of the matter. In support of her contention, learned advocate for the petitioner has relied on two decisions of the Division Bench of this Court, rendered in the case of (i) *New India Assurance Co.Ltd. v. Muna Maya Basant W/o. Sher Bahadur Basant,* 2001 (1) G.L.R.915 and *(ii) Amarsi Jugabhai and Ors. V Vijayaben*

Hemantlal Dhulia and Ors, 1996 (1) G.L.H. 1007.

6. It was further submitted that in a cognate claim petition arising from the same accident being M.A.C.P. No.1039 of 2000, the Tribunal has allowed a similar application and has directed that the driver, owner and Insurance Company of the scooter bearing registration No.GTV-397 be joined as parties. It was submitted that even on the ground of parity the application ought to have been allowed.

7. In the case of *Amarsi Jagabhai and Ors. vs. Vijayaben Hemantlal Dhulia and Ors.* (Supra) this Court has held that when an application for joining party is submitted by the joint tortfeasors on record, such application should be allowed almost as a matter of rule and practice and another joint tortfeasor should be joined as party defendant/opponent.

8. In *New India Assurance Co.Ltd. v. Muna Maya Basant W/o. Sher Bahadur Basant* (Supra) this Court has held that whenever a plea for joining another joint-tortfeasor is raised and prayed for, it would be better for the Tribunal to insist that all the tortfeasors are brought on record. If one of the tortfeasors is left out, either of the parties can move the Tribunal for his joinder and in that case, the Tribunal will have to allow the application and join the left

out tortfeasor as the opponent so that there may not be any scope for fresh or more litigations.

9. In view of the aforesaid settled legal position as enunciated in the aforesaid decisions rendered by this Court, it was incumbent upon the Tribunal to join the tortfeasors as parties/defendants more particularly when in a cognate claim petition arising from the same accident, the Tribunal has allowed a similar application. Hence, even on the ground of parity the Tribunal ought to have allowed the application.

10. For the reasons stated above, the petition succeeds. The impugned order dated 11th June, 2004, passed by the Motor Accident Claims Tribunal at Himatnagar, below Exh.19 in M.A.C.P. No.615 of 2001 is quashed and set aside. The petitioner is permitted to join the driver, owner and Insurance Company of the Scooter bearing registration No.GTV-397 as parties in M.A.C.P.No.615 of 2001. Rule is made absolute accordingly with no order as to costs.

(HARSHA DEVANI,J.)

*mithabhai